REMARKS

Claims 1-31 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Double Patenting Rejection:

The Examiner provisionally rejected the instant application under the judicially created doctrine of non-statutory double patenting as not being patentably distinct from the claimed invention of co-pending U.S. Application No. 09/880,166. Applicants respectfully traverse this rejection. The Examiner only refers to claim 1 of each application. The Examiner implies that the only difference between the claims is the use of the term "extent" in claim 1 of the present application and the term "data range" in the 09/880,166 application. However, a simple comparison of claim 1 from each application reveals that the claims differ in more than just the use of the terms "extent" and "data range". For example, claim 1 of the present application recites "wherein if the extent checksum differs from the preexisting extent checksum, the storage array controller is further configured to initiate one or more unit scrubbing operations, wherein each unit scrubbing operation comprises calculating a new unit checksum for a first unit of data, wherein the first unit of data is comprised within the first data range, and comparing the new unit checksum to an existing unit checksum for the first unit of data". This limitation is not recited in claim 1 of the 09/880,166 application. Since the Examiner did not address each difference between claim 1 of the present application and the claims of the 09/880,166 application, the Examiner has failed to state a *prima facie* rejection.

Furthermore, the Examiner has provided no explanation at all of how claims 2-31 are obvious from the claims of the 09/880,166 application. The Examiner only referred to claim 1 of the present application. To support a *prima facie* non-statutory double patenting rejection of claims 2-31, the Examiner must show how **each limitation** of **each of claims 2-31** would be obvious from the claims of the 09/880,166 application. Since

the Examiner did not address any of claims 2-31 of the present application, the Examiner has failed to state a *prima facie* rejection for claims 2-31.

Moreover, according to M.P.E.P. 804.I.B: "If the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the Examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in other application(s) into a double patenting rejection at the time the one application issues as a patent." Thus, since the provisional double patenting rejection is the only rejection remaining in the present application and the 09/880,166 application, the Examiner must immediately withdraw the provisional double patenting rejection in one of the applications and allow that application to issue as a patent. If the Examiner still believes such a rejection appropriate, he should make the rejection in the other application.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-83701/RCK.

Also enclosed herewith are the following items:

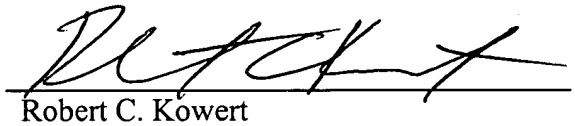
☒ Return Receipt Postcard

☐ Petition for Extension of Time

☐ Notice of Change of Address

☒ Other: Information Disclosure Statement & Form PTO-1449

Respectfully submitted,



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